

Board Administration and Regulatory Coordination Unit

Division 3. Air Resources Board

Chapter 5. Standards for Motor Vehicle Fuels

Article 1. Standards for Gasoline

Subarticle 1. Gasoline Standards That Became Applicable Before 1996

§ 2251.5. Reid Vapor Pressure of Gasoline Sold After January 1, 1992, and Before March 1, 1996.

(a) Regulatory Standards.

(1) Basic Regulatory Standard.

(A) Starting January 1, 1992, within each of the air basins during the regulatory period set forth in section (a)(1)(B), no person shall sell, offer for sale, dispense, supply, offer for supply, or transport California gasoline which has a Reid vapor pressure exceeding 7.80 pounds per square inch.

(B) Basic Regulatory Control Periods.

1. April 1 through October 31:

South Coast Air Basin and Ventura County

San Diego Air Basin

Southeast Desert Air Basin

2. May 1 through September 30:

Great Basin Valley Air Basin

3. May 1 through October 31:

San Francisco Bay Area Air Basin

San Joaquin Valley Air Basin

Sacramento Valley Air Basin

Mountain Counties Air Basin

Lake Tahoe Air Basin

4. June 1 through September 30:

North Coast Air Basin

Lake County Air Basin

Northeast Plateau Air Basin

5. June 1 through October 31:

North Central Coast Air Basin

South Central Coast Air Basin (Excluding Ventura County)

(2) Additional Regulatory Standards for Gasoline Sold, Supplied or Transferred from a Production or Import Facility.

(A) Starting January 1, 1992, no producer or importer shall sell, offer for sale, supply, or offer to supply from its California production facility or California import facility in an air basin during the regulatory period specified in section (a)(2)(B), California gasoline which has a Reid vapor pressure exceeding 7.80 pounds per square inch. Starting January 1, 1992, no person shall transport directly from a California production facility or California import facility in an air basin during the regulatory period set forth in section (a)(2)(B), California gasoline which has a Reid vapor pressure exceeding 7.80 pounds per square inch.

(B) Additional Regulatory Control Periods.

1. March 1 through March 31:

South Coast Air Basin and Ventura County

San Diego Air Basin

Southeast Desert Air Basin

2. April 1 through April 30:

San Francisco Bay Area Air Basin

San Joaquin Valley Air Basin

Sacramento Valley Air Basin

Great Basin Valley Air Basin

Mountain Counties Air Basin

Lake Tahoe Air Basin

3. May 1 through May 31:

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(3) Special Provisions for Blends of Gasoline Containing Ethanol.

(A) Any blend of gasoline containing at least 10 percent ethanol by volume shall not result in a violation of this section (a) unless the gasoline used in the blend exceeds the standards set forth in this section (a).

(B) Section (a)(3)(A) shall be effective only so long as Health and Safety Code section 43830 establishes special provisions for the volatility of gasoline blends containing at least 10 percent ethanol by volume.

(C) Any sale, offer for sale, supply, or transport of gasoline containing at least 4.9 percent ethanol by volume, which occurs in October 1993, October 1994, or October 1995, shall not constitute a violation of section (a)(1) unless the gasoline has a Reid vapor pressure exceeding 8.80 pounds per square inch.

(D)1. Any sale, offer for sale, or supply of gasoline containing at least 4.9 percent ethanol by volume from a final distribution facility during the 15 days preceding a transition period shall not constitute a violation of section (a)(1) as long as:

a. The gasoline has a Reid vapor pressure not exceeding 8.80 pounds per square inch, and

b. The person selling or supplying the gasoline demonstrates to the satisfaction of the executive officer, prior to the sale or supply, that it is reasonably necessary to add ethanol to the gasoline to enable the calibration of metered ethanol blending equipment prior to the start of the regulatory control period.

2. Any transaction involving gasoline after it has been transferred from a final distribution facility shall not constitute a violation of section (a)(1) if the person engaged in the transaction demonstrates by affirmative defense that the sale, offer for sale or supply of the gasoline from the final distribution facility met the criteria set forth in section (a)(3)(D)(1).

3. For the purposes of this section (a)(3)(D), "final distribution facility," "transition period," and "regulatory control period" shall have the same meaning set forth in Title 13, California Code of Regulations, sections 2258(b) and 2258(a)(2).

(4)(A) Section (a)(1) shall not apply to a transaction occurring in an air basin during the basic regulatory control period where the person selling, supplying, or offering the gasoline demonstrates as an affirmative defense that, prior to the transaction, he or she has taken reasonably prudent precautions to assure that the gasoline will be delivered to a retail service station or bulk purchaser-consumer's fueling facility when the station or facility is not subject to a basic regulatory control period.

(B) Section (a)(2) shall not apply to a transaction occurring in an air basin during the additional regulatory control period for producers and importers where the person selling, supplying, offering or transporting the gasoline demonstrates as an affirmative defense that, prior to the transaction, he or she has taken reasonably prudent precautions to assure that the gasoline will be delivered to a retail service station or bulk purchaser-consumer's fueling facility located in an air basin not then subject to the basic regulatory control period or the additional control period for producers and importers.

(C) Section (a)(1) shall not apply to a transaction occurring in an air basin during the basic regulatory control period where the transaction involves the transfer of gasoline from a stationary storage tank to a motor vehicle fuel tank and the person selling, supplying, or offering the gasoline demonstrates as an affirmative defense that the last delivery of gasoline to the stationary storage tank occurred more than fourteen days before the start of the basic regulatory control period.

(5) For the purposes of section (a)(1), each sale of California gasoline at retail, and each dispensing of California gasoline into a motor vehicle fuel tank, shall also be deemed a sale or supply by any person who previously sold or supplied such gasoline in violation of section (a)(1).

(b) Definitions.

For the purposes of this section:

(1) "Bulk purchaser-consumer" means a person that purchases or otherwise obtains gasoline in bulk and then dispenses it into the fuel tanks or motor vehicles owned or operated by the person.

(2) "California gasoline" means gasoline sold or intended for sale as a motor vehicle fuel in California.

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(3) "California production facility" means a facility in California at which gasoline is produced; it does not include a facility whose sole operation is to transfer gasoline or to blend additives into gasoline.

(4) "Ethanol" means ethyl alcohol which meets any additional requirements for ethanol or ethyl alcohol in Health and Safety Code section 43830.

(5) "Gasoline" means any fuel which is commonly or commercially known or sold as gasoline, or which is a mixture of more than 50 percent fuel commonly known or sold as gasoline and alcohol.

(6) "Importer" means any person who first accepts delivery in California of California gasoline.

(7) "Import facility" means the facility at which imported California gasoline is first received in California, including, in the case of California gasoline imported by cargo tank and delivered directly to a facility for dispensing gasoline into motor vehicles, the cargo tank in which the gasoline is imported.

(8) "Motor vehicle" has the same meaning as defined in section 415 of the Vehicle Code.

(9) "Produce" means to convert liquid compounds which are not gasoline into gasoline.

(10) "Producer" means any person who owns, leases, operates, controls or supervises a California production facility.

(11) "Supply" means to provide or transfer a product to a physically separate facility, vehicle, or transportation system.

(c) Sampling and Test Methods.

(1) Compliance with the standards set forth in section (a)(1) and (2) shall be determined by use of an applicable sampling methodology set forth in 13 CCR section 2296, and by use of either (A) the American Society for Testing and Materials Method ASTM D 328-58 (which is incorporated by reference herein), deleting paragraph 4(b) concerning sampling or (B) the test method set forth in Section 2297.

(2) For purposes of section (a)(3), the ethanol content of gasoline shall be determined by: (A) use of American Society of Testing and Materials Test Method D 4815-94 (which is incorporated by reference herein) to determine the mass percent of ethanol in the gasoline, and (B) conversion of the concentration of ethanol from percent by mass to percent by volume according to Section 14.3 of ASTM D 4815-94. The volume of ethanol shall include the volume of any denaturant approved for that purpose by the United States Bureau of Alcohol, Tobacco and Firearms, provided those denaturants do not exceed 5 percent of the volume of alcohol (including denaturants).

(d) Variances.

(1) Any person who cannot comply with the requirements set forth in section (a)(1) or (2) before January 1, 1994 because of reasons beyond the person's reasonable control may apply to the executive officer for a variance. The application shall set forth:

(A) the specific grounds upon which the variance is sought;

(B) the proposed date(s) by which compliance with the provisions of section (a)(1) or (2) will be achieved; and

(C) a plan reasonably detailing the method by which compliance will be achieved.

(2) Upon receipt of an application for a variance containing the information required in section (d)(1), the executive officer shall hold a hearing to determine whether, or under what conditions and to what extent, a variance from the requirements in section (a)(1) or (2) is necessary and will be permitted. Notice of the time and place of the hearing shall be sent to the applicant by certified mail not less than 20 days prior to the hearing. Notice of the hearing shall also be submitted for publication in the California Regulatory Notice Register and sent to every person who requests such notice, not less than 20 days prior to the hearing.

(3) At least 20 days prior to the hearing, the application for the variance shall be made available to the public for inspection. Interested members of the public shall be allowed a reasonable opportunity to testify at the hearing and their testimony shall be considered.

(4) No variance shall be granted unless all of the following findings are made:

(A) that, because of reasons beyond the reasonable control of the applicant, requiring compliance with section (a)(1) or (2) would result in an extraordinary economic hardship;

(B) that the public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in avoiding any increased emissions of air contaminants which would result from issuing the variance; and

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(C) that the compliance plan proposed by the applicant can reasonably be implemented and will achieve compliance as expeditiously as possible.

(5) No variance may be effective after December 31, 1993. Any variance order shall impose a substitute gasoline Reid vapor pressure limit as stringent as feasible under the circumstances, in no case to exceed 9.0 pounds per square inch. Any variance order shall specify a final compliance date by which the requirements in section (a)(1) or (2) will be achieved. Any variance order shall also contain a condition that specified increments of progress necessary to assure timely compliance be achieved, and such other conditions that the executive officer, as a result of the testimony received at the hearing, finds necessary to carry out the purposes of Division 26 of the Health and Safety Code.

(6) The executive officer may require, as a condition of granting a variance, that a cash bond, or a bond executed by two or more good and sufficient sureties or by a corporate surety, be posted by the party to whom the variance was granted to assure performance of any construction, alteration, repair, or other work required by the terms and conditions of the variance. Such bond may provide that, if the party granted the variance fails to perform such work by the agreed date, the cash bond shall be forfeited to the state board, or the corporate surety or sureties shall have the option of promptly remedying the variance default or paying to the state board an amount, up to the amount specified in the bond, that is necessary to accomplish the work specified as a condition of the variance.

(7) No variance which is issued due to conditions of breakdown, repair, or malfunction of equipment shall have a duration, including extensions, of more than six months.

(8) The executive officer may, after holding a hearing without complying with the provisions of sections (d)(2) and (d)(3), issue an emergency variance to a person from the requirements of sections (a)(1) upon a showing of reasonably unforeseeable extraordinary hardship and good cause that a variance is necessary. In connection with the issuance of an emergency variance, the executive officer may waive the requirements of section (d)(6). No emergency variance may extend for a period of more than 45 days. If the applicant for an emergency variance does not demonstrate that he or she can comply with the provisions of section (a)(1) or (2) within such 45-day period, an emergency variance shall not be granted unless the applicant makes a prima facie demonstration that the findings set forth in section (d)(4) should be made. The executive officer shall maintain a list of persons who have informed the executive officer in writing of their desire to be notified by telephone in advance of any hearing held pursuant to this section (d)(8), and shall provide advance telephone notice to any such person.

(9) A variance shall cease to be effective upon failure of the party to whom the variance was granted substantially to comply with any condition.

(10) Upon the application of any person, the executive officer may review and for good cause modify or revoke a variance from the requirements of section (a)(1) or (2) after holding a hearing in accordance with the provisions of sections (d)(2) and (d)(3).

(e) Sunset

This section shall not apply to gasoline sold or supplied on or after March 1, 1996.

NOTE: Authority cited: Sections 39600, 39601, 43013, 43018, 43101 and 43830, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal. Rptr. 249 (1975). Reference: Sections 39000, 39001, 39002, 39003, 39500, 39515, 39516, 39606, 41511, 43000, 43016, 43018, 43101 and 43830, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal. Rptr. 249 (1975).

REFERENCE